

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TIMOTHY TALLEY,

Plaintiff,
v.

GLEN E. BENNETT and MARY L. McLEOD,

ORDER

23-cv-591-jdp

Defendants.

Plaintiff Timothy Talley, appearing pro se, is incarcerated at Oakhill Correctional Institution. Talley alleges that defendant prison officials had him clean oven racks using a powerful cleaner without providing him proper protective gear or ventilation, and that he was injured by the cleaner. Talley has filed a motion for reconsideration of my order screening his complaint. Dkt. 9.

I granted Talley leave to proceed on Eighth Amendment and Wisconsin-law negligence and safe-place-statute claims against defendant Glen E. Bennett for ordering Talley to close the outside door even though he knew that Talley was using it for ventilation. *See* Dkt. 8. I granted Talley leave to proceed on negligence and safe-place-statute claims against defendant Mary L. McLeod for failing to warn him about the risk of harm from the cleaner or provide him with protective gear as she had previously done for other prisoners. *Id.* But I did not allow him to proceed with an Eighth Amendment claim against McLeod because he didn't suggest that McLeod intentionally failed to give him a warning or safety gear knowing that he would be harmed. *Id.*

In his motion for reconsideration, Talley contends that he has alleged enough to plead an Eighth Amendment claim against McLeod because he states that she was aware of the risks

posed by the powerful cleaner and that she failed to provide him with the proper protective equipment. I will infer from McLeod's complaint and his new filing that McLeod consciously disregarded the risk of harm to Talley and thus he has stated an Eighth Amendment claim against McLeod. So I will grant his motion for reconsideration. But to survive summary judgment or win at trial, Talley will need to present evidence showing that McLeod intentionally or recklessly failed to provide him with protective equipment, not just that the failure was a mistake or an oversight.

ORDER

IT IS ORDERED that:

1. Plaintiff Timothy Talley's motion for reconsideration, Dkt. 9, is GRANTED.
2. Plaintiff is now GRANTED leave to proceed on the following claims:
 - Eighth Amendment claims against defendants Mary L. McLeod and Glen E. Bennett.
 - Wisconsin-law claims against McLeod and Bennett under common-law negligence and under Wis Stat. § 101.11(1).

Entered November 14, 2023.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge